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October 6, 1997

BY HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 852
Washington, D.C. 20554

RECEIVED

OCT - 6 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **CC Docket 96-45, FREEDOM OF INFORMATION ACT REQUEST**

Dear Mr. Fishel:

General Communication, Inc. ("GCI") hereby responds to the September 29, 1997 opposition of Anchorage Telephone Utility (the "ATU Opposition") to GCI's September 17, 1997 request for disclosure of data submitted to the Commission by ATU in the Commission's universal service proceeding, CC Docket 96-45. GCI submitted its request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Commission's regulations thereunder, 47 C.F.R. § 0.461. A copy of GCI's FOIA request is attached hereto for your convenience.

By an Order released July 9, 1997 (DA 97-1433), the Commission directed ATU and certain other LECs to submit 21 categories of data to assist the Commission in developing a cost model for distribution of universal service support for non-rural LECs. The universal service cost model will be used to determine eligibility for USF funding where universal service is provided by ATU or a competitor such as GCI. The cost model also will determine the amounts that contributors like GCI must pay to support the provision of universal service.

GCI does not, as ATU alleges, have an ulterior motive in requesting to review the data submitted by ATU. See ATU Opposition at 2. Rather, because any USF payment to GCI or any USF payment that GCI must make will be directly affected by the model inputs provided by ATU, GCI must be able to review those inputs to determine whether they are reasonable. As a well established long distance carrier in Alaska, GCI is uniquely qualified to assist the Commission in this proceeding. GCI has extensive knowledge of the Alaska

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market and its review would greatly aid the Commission in its deliberations regarding the model's application to Alaska.¹

ATU requested non-disclosure of 13 of the 21 categories of data it submitted to the Commission. ATU Non-Disclosure Request (filed August 15, 1997). However, as GCI demonstrated in its FOIA request and as shown again below, ATU has failed to show "by a preponderance of the evidence a case for non-disclosure consistent with the Freedom of Information Act, 5 U.S.C. 552." 47 C.F.R. § 0.459. Commercial or financial information that is filed with a federal agency pursuant to a mandatory requirement (such as the Commission's data request) is not considered confidential under 5 U.S.C. § 552(b)(4) unless disclosure is likely to cause substantial competitive harm to the submitting party or impair the government's ability to obtain necessary information in the future. National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). ATU therefore must demonstrate that disclosure of each data category is likely to cause it to suffer substantial competitive harm. ATU's conclusory and generalized allegations of competitive harm do not support non-disclosure. National Parks and Conservation Ass'n v. Kleepe, 547 F.2d 673, 680-81 (D.C. Cir. 1976).

The data categories for which ATU has requested non-disclosure and GCI's response to ATU's Opposition are set forth below.

Category 1 Category 1 data includes the number of loops by study area and wire center that are residential, single-line business and multi-line business. ATU argues that such data will enable competitors to "direct their marketing efforts toward more densely populated and multi-line business locations." ATU Opposition at 4. As ATU well knows, any competitor that wishes to serve multi-line business locations does not require ATU loop data; rather, it would simply target larger Anchorage businesses. GCI in particular has 15 years of experience providing long distance service to Anchorage's business community. Moreover, category 1 data is not needed by competitors to target densely populated areas; such areas are conspicuous in Anchorage and, in any event, well known through publicly available census data. In fact, census block group data is more useful than the wire center

1. ATU notes that Mr. Jackson of GCI stated before the Alaska Public Utilities Commission that he is uncertain whether USF support will flow to Anchorage. ATU Opposition at 2. Uncertainty regarding USF flows, however, does not vitiate GCI's need to review the data submitted by ATU. Whether or not support will flow to Anchorage could depend upon the data submitted by ATU and even if it does not flow to Anchorage, GCI will have to contribute to the Commission's universal service fund based on a model predicated, in part, on data submitted by ATU.

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data ATU seeks to protect since it provides telephone subscribership data on a more detailed basis. Category 1 data is not competitively sensitive and should be disclosed.

Category 3 Category 3 data includes subscriber line usage studies by study area. See Order released July 9, 1997 (DA 97-1433) at 4. ATU, however, mistakenly asserts that this data is disaggregated on a wire center basis and that competitors therefore will be able to target high usage areas. ATU Opposition at 4. Even if the data includes estimated minutes of use on a wire center basis as ATU alleges, such data does not have the competitive significance ascribed to it by ATU. GCI has arranged for interconnection at all 5 of ATU's wire centers (North, East, South, West and Central) and intends to provide ubiquitous service in Anchorage. Moreover, as GCI explained above, any competitor that intends to serve high usage areas would concentrate its marketing efforts on larger Anchorage businesses. Category 3 data, even if produced by ATU on a wire center basis, is not competitively sensitive and should be disclosed.

Categories 6, 7 and 15 In its request for non-disclosure, ATU claimed that the Commission should not disclose data for cable facilities (category 6), subscriber utilization studies (category 7) and drop lines (category 15) because disclosure of such data could influence ATU's position in other regulatory and court proceedings. See ATU Non-Disclosure Request at 2, 3 and 5. In light of ATU's professed concern, GCI stated that it is willing to review the data subject to an appropriately crafted confidentiality agreement. See GCI FOIA Request at 3, 4 and 7. GCI reiterates its willingness to review such data pursuant to an appropriately crafted confidentiality agreement. GCI envisions that such an agreement would limit the use of the data to this proceeding and prohibit its disclosure to third parties. In its opposition to GCI's FOIA request, ATU claims for the first time that the data submitted under categories 6, 7 and 15 is somehow competitively sensitive. The Commission should not countenance ATU's post hoc attempt to recast the nature of the data it submitted and make it available to GCI and others who execute an appropriately crafted confidentiality agreement. Indeed, ATU does not even allege that it would suffer substantial competitive harm if the data were disclosed to GCI. Therefore, under National Parks the data must be disclosed.

Categories 10, 14 and 17 ATU initially requested non-disclosure of its data for poles (category 10), digital line carriers (category 14) and riser cable (category 17) on the grounds that such data may be inaccurate and "could be incorrectly applied to ATU's cost structure in other proceedings." ATU Non-Disclosure Request at 3, 4 and 7. That ATU's inputs for the universal service model may be inaccurate underscores the need for GCI to review the information and assist the Commission in determining the reasonableness of the data supplied

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by ATU. Certainly, alleged potential inaccuracy is no grounds to withhold data from disclosure under the FOIA.

With respect to category 10 data, ATU now states it "has no authority to authorize disclosure of this information." ATU Opposition at 5. ATU's belated attempt at manipulating the Commission's FOIA process is transparent. If the data was subject to a confidentiality arrangement, ATU would have stated so in its initial request for non-disclosure as it alleged with respect to several categories of data. See ATU Non-Disclosure Request at 5 (Fujitsu Contract). Neither ATU nor the utility from whom ATU obtained the category 10 data claim that the data is subject to a confidentiality agreement or explain why such an agreement would be appropriate. Nevertheless, GCI is willing to review category 10 data pursuant to an appropriately crafted confidentiality agreement if the Commission deems such an agreement necessary.

With respect to category 14 data, ATU alleges that average DLC costing information may enable competitors "to determine whether it may or may not be profitable to install their own facilities." ATU Opposition at 5. Since ATU does not even allege that it would suffer substantial competitive harm on account of disclosure of the data, disclosure is mandatory under National Parks.

With respect to category 17 data, ATU claims that, notwithstanding its inaccuracy (see ATU Non-Disclosure Request at 7), such data "may encourage competitors to solicit ATU's customers." ATU Opposition at 6. However, it appears from ATU's Opposition that the competitors from whom it now seeks protection include "any electrical contractor in Anchorage." ATU Opposition at 6. Given ATU's avowed concerns about competition from electrical contractors, GCI is willing to review the data pursuant to an appropriately crafted confidentiality agreement.

Category 9 Category 9 data includes the number of multi-line residential customers on a study area and wire center basis. ATU argues this data is competitively sensitive, claiming that "[b]y tracking the number of multi-line customers they have converted, competitors will know approximately what percentage of ATU's class of multi-line customers they have obtained and how many remain." ATU Opposition at 4. It would be impossible for individual competitors to track the net gain or loss of ATU's multi-line subscribers based on historical data since the number of ATU's multi-line subscribers is constantly changing. Presumably, the number is increasing as computers and fax machines become more commonplace in homes and residential users order additional lines. Moreover, the percentage of customers converted is of little competitive significance since any competitor

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will seek to convert as many customers as possible. ATU has failed to show that category 9 data is competitively sensitive and it should be disclosed.

Category 11 Category 11 data includes property records for digital electronic switching by wire center. ATU alleges that such data would enable competitors to calculate the cost of serving particular areas. ATU Opposition at 5. Even if such data permitted an ATU competitor to calculate ATU's approximate cost of serving an area, such data alone is not competitively sensitive. Whether a competitor succeeds or fails will depend upon its own costs and success in the marketplace. ATU's costs are relevant only because they are used to calculate payments to be made to ATU or GCI because of regulatory requirements such as the universal service fund. GCI is also affected by ATU's prices for various interconnection and resale services. The costs for these services -- including digital switching -- are subject to disclosure in the Section 252 negotiation and arbitration process. Indeed, this kind of make/buy decision, based on the incumbent LEC's prices for interconnection is at the very heart of the competitive process put in place by Sections 251/252 of the Act. Accordingly, under National Parks category 11 data should be disclosed.

Categories 13 and 21 This data consists of contracts for switches (category 13) and digital line carriers (category 21). ATU claims that "[i]f these vendor contracts are disclosed to the public, ATU's ability to negotiate future contracts with these and other vendors would be impaired." ATU Opposition at 5. In its FOIA Request, however, GCI did not request public disclosure of the contracts. Rather, GCI stated its willingness to review the contracts pursuant to an appropriately crafted confidentiality agreement. GCI envisions that such an agreement would limit the use of data contained in the contracts to this proceeding and prohibit disclosure to third parties. Under these conditions, ATU cannot reasonably argue that it would suffer competitive harm. Category 13 and 21 data therefore should be disclosed.

Category 18 Category 18 data includes the number of residential, single-line business and multi-line business subscribers by study area. ATU claims that this information will enable competitors to calculate an average end user revenue figure and therefore is somehow competitively significant. ATU Opposition at 6. The Commission cannot seriously accept that disclosure of average customer revenue figures on a study area basis would result in substantial competitive harm to ATU. Category 18 data simply is too aggregated to have meaningful competitive significance and therefore must be disclosed under National Parks.

For the reasons stated above, ATU's request for confidential treatment should be denied in its entirety and the subject data should be placed in the public file. If the

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Commission determines that a particular data category should not be placed in the public file, then it should provide such data to those parties who execute an appropriately crafted confidentiality agreement. See e.g., Letter from Kathleen M. H. Wallman, Chief, Common Carrier Bureau to John L. McGrew, et al., FOIA Control No. 95-223, 10 FCC Rcd 10574, 10575 (Aug. 11, 1995) ("Even when cost support materials have been found to merit protection under [FOIA] Exemption 4 . . . limited disclosure to parties to tariff review proceedings has been ordered under protective orders or agreements.").

Please direct any questions concerning the foregoing to the undersigned at (202) 842-8847.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathy L. Shobert", with a stylized, flowing script.

Kathy L. Shobert

Attachment

cc: L. Charles Keller (by hand)
Paul J. Berman, Esq.
Alane C. Weixel, Esq.

September 17, 1997



BY HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 852
Washington, D.C. 20554

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SEP 17 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **CC Docket 96-45, FREEDOM OF INFORMATION ACT REQUEST**

Dear Mr. Fishel:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Commission's regulations thereunder, 47 C.F.R. § 0.461, General Communication, Inc. ("GCI") requests disclosure of data submitted to the Commission by Anchorage Telephone Utility ("ATU") on August 15, 1997 in CC Docket 96-45. The data was submitted on behalf of ATU by Paul J. Berman and Alane C. Weixel, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044-7566.

By an Order released July 9, 1997 (DA 97-1433),¹ the Commission directed ATU and certain other LECs to submit 21 categories of data to assist the Commission in developing a cost model for distribution of universal service support for non-rural LECs. The cost model will be used to determine eligibility for USF funding where universal service is provided by ATU or a competitor such as GCI. Similarly, it will also determine the amounts that contributors like GCI must pay to support the provision of universal service. Because any USF payment to GCI will be directly affected by the model inputs provided by ATU, GCI must be able to review those inputs to determine whether they are reasonable. GCI has extensive knowledge of the Alaska market and its review would greatly aid the Commission in its deliberations regarding the model's application to Alaska.

ATU requested non-disclosure of 13 of the 21 categories of data it submitted to the Commission. However, ATU has not shown "by a preponderance of the evidence a case for non-disclosure consistent with the Freedom of Information Act, 5 U.S.C. 552." 47 C.F.R.

1. A copy of the Order is attached for your reference.

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§ 0.459. ATU's requests and GCI's responses thereto are set forth below organized in the same manner as the ATU filing.

1. Loops - *This information is competitively sensitive. ATU must compete in the market place along-side other alternative providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI Communications, Inc. ("GCI") and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska. Providing this information publicly would give ATU's competitors a competitive advantage by providing insight and direction for targeting markets for penetration purposes. For instance, competitors would be able to identify customers by location per central office and by residential and business class of service. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's services, without having to disclose their own information to provide their equivalent service offering.*
1. GCI Response - Commercial or financial information that is filed with a federal agency pursuant to a mandatory requirement (such as the Commission's data request) is not considered confidential under 5 U.S.C. § 552(b)(4) unless disclosure is likely to cause substantial competitive harm to the submitting party or impair the government's ability to obtain necessary information in the future. National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). ATU therefore must demonstrate that disclosure of loop data, by wire center, is likely to cause it to suffer substantial competitive harm. ATU's conclusory and generalized allegations of competitive harm cannot support non-disclosure. National Parks and Conservation Ass'n v. Kleppe, 547 F.2d 673, 680-81 (D.C. Cir. 1976). GCI will be a contributor to and possibly a recipient of universal service funds. Its ability to provide meaningful comment on the Commission's models for estimating forward-looking economic costs that non-rural LECs would incur to provide universal service in Alaska would be severely impeded if ATU's request for non-disclosure were granted.
3. Subscriber line usage studies - *This information is competitively sensitive. ATU must compete in the market place along-side other alternative service providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI Communications, Inc. ("GCI") and the*

other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska. Providing this information publicly would give ATU's competitors a competitive advantage by providing insight and directly for targeting markets for penetration purposes. For instance, competitors would be able to identify concentrations of traffic per central office. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's traffic volume and patterns, without having to disclose their own information to provide their equivalent service offering.

3. **GCI Response** - Commercial or financial information that is filed with a federal agency pursuant to a mandatory requirement (such as the Commission's data request) is not considered confidential under 5 U.S.C. § 552(b)(4) unless disclosure is likely to cause substantial competitive harm to the submitting party or impair the government's ability to obtain necessary information in the future. National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). ATU therefore must demonstrate that disclosure of subscriber line usage studies, by study area, is likely to cause it to suffer substantial competitive harm. ATU's conclusory and generalized allegations of competitive harm cannot support non-disclosure. National Parks and Conservation Ass'n v. Kleepe, 547 F.2d 673, 680-81 (D.C. Cir. 1976). GCI will be a contributor to and possibly a recipient of universal service funds. Its ability to provide meaningful comment on the Commission's models for estimating forward-looking economic costs that non-rural LECs would incur to provide universal service in Alaska would be severely impeded if ATU's request for non-disclosure were granted.
6. *Installation cost data for cable facilities - Although aggregate cost data for cable facilities has been filed with both the state and federal commissions, the level of detailed information included herein has not. The level of detail provided herein discloses competitively sensitive information about ATU's specific costs to install cable facilities. If made public, it could negatively impact ATU's position in other proceedings.*
6. **GCI Response** - An alleged and speculative negative impact in other unspecified proceedings purportedly arising from disclosure of cost data for cable facilities is not an adequate basis for non-disclosure. Nevertheless, GCI is willing to review such information subject to an appropriate confidentiality agreement.

7. Subscriber utilization studies - ATU and the Alaska Public Utilities Commission are involved in a court case that includes a dispute regarding the cable fill investments of ATU. Since this information provides current fill factor conditions that may influence the court proceeding, it is considered confidential.
7. GCI Response - The fact that ATU and the Alaska PUC are disputing ATU's cable fill investments does not transform ATU's current fill factors into confidential information subject to non-disclosure. Nevertheless, GCI is willing to review such information subject to an appropriate confidentiality agreement.
9. Multi-line residential customers - This information is competitively sensitive. ATU must compete in the marketplace along side other alternative service providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska. Providing this information publicly would give ATU's competitors a competitive advantage. For instance, competitors would be able to identify customer location by central office and class of service. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's services, without having to disclose their own information to provide their equivalent service offering.
9. GCI Response - Commercial or financial information that is filed with a federal agency pursuant to a mandatory requirement (such as the Commission's data request) is not considered confidential under 5 U.S.C. § 552(b)(4) unless disclosure is likely to cause substantial competitive harm to the submitting party or impair the government's ability to obtain necessary information in the future. National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). ATU therefore must demonstrate that disclosure of the number of its multi-line residential customers, by study area and by wire center, is likely to cause it to suffer substantial competitive harm. ATU's conclusory and generalized allegations of competitive harm cannot support non-disclosure. National Parks and Conservation Ass'n v. Kleepe, 547 F.2d 673, 680-81 (D.C. Cir. 1976). GCI will be a contributor to and possibly a recipient of universal service funds. Its ability to provide meaningful comment on the Commission's models for estimating forward-looking economic costs that non-rural

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LECs would incur to provide universal service in Alaska would be severely impeded if ATU's request for non-disclosure were granted.

10. Poles - ATU does not normally install poles. Therefore, ATU requested pole installation information from the local electric company. As a result, the estimate may not represent an accurate cost for ATU to install a pole and could be incorrectly applied to ATU's cost structure in other proceedings.
10. GCI Response - ATU does not claim that the subject information is confidential and thus it is subject to disclosure. Moreover, the fact that ATU purchases pole installation from the local electric utility does not make such information confidential. Section 552(b)(4) therefore does not apply. ATU also alleges that its estimate for installing a pole "may" be inaccurate and that such inaccuracy may be misapplied in other proceedings. Mere inaccuracy does not render data confidential nor protect data from public disclosure. In any event, ATU would be in a position to remedy any inaccuracies should the need arise. That the data may be inaccurate and may distort the USF model underscores why it is essential to require disclosure.
11. Detailed Continuing Property Records - This information is competitively sensitive. ATU must compete in the market place along-side other alternative service providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI Communications, Inc. ("GCI") and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska. Providing this information publicly would give ATU's competitors a competitive advantage by providing insight and direction for targeting markets for penetration purposes. For instance, competitors would be able to identify customer concentrations per central office. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's services, without having to disclose their own information to provide their equivalent service offering.
11. GCI Response - Commercial or financial information that is filed with a federal agency pursuant to a mandatory requirement (such as the Commission's data request) is not considered confidential under 5 U.S.C. § 552(b)(4) unless disclosure is likely to cause substantial competitive harm to the submitting party or impair the government's ability to obtain necessary information in the future. National Parks and Conversation

Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). ATU therefore must demonstrate that disclosure of the detailed continuing property record balance for USOA Account 2212 (digital electronic switching) and the associated material and installation cost, by wire center, is likely to cause it to suffer substantial competitive harm. ATU's conclusory and generalized allegations of competitive harm cannot support non-disclosure. National Parks and Conservation Ass'n v. Kleepe, 547 F.2d 673, 680-81 (D.C. Cir. 1976). GCI will be a contributor to and possibly a recipient of universal service funds. Its ability to provide meaningful comment on the Commission's models for estimating forward-looking economic costs that non-rural LECs would incur to provide universal service in Alaska would be severely impeded if ATU's request for non-disclosure were granted.

13. Contracts with switching manufacturers - *The contracts with Pairgain and Northern Telecom, Inc. ("NTI") are considered confidential as these vendors provide competitive products and services. Since contracts are negotiated and terms and conditions vary among vendor customers, Pairgain and NTI have requested their contracting information be kept confidential so as to not interfere with the negotiation process among other customers. For example, the sales agreement with NTI requires ATU to treat and protect all information received from NTI or its suppliers as confidential information.*
13. GCI Response - ATU asserts that its contracts with NTI and Pairgain are confidential. ATU notes, for example, that the NTI contract contains a confidentiality provision; however, this provision does not, on its face, apply to the contract itself rather it applies to information received from NTI. ATU cannot rest behind the request of its vendors to treat the contracts as confidential. The relevant inquiry is whether disclosure of the contracts would competitively harm ATU, not some speculative harm to NTI or Pairgain. ATU has not even alleged that it would suffer competitive harm. Nevertheless, GCI is willing to review such contracts subject to an appropriate confidentiality agreement.
14. Digital line carrier devices - *Installation charges to install the DLCs are allocated to the material costs upon completion of the installation workorder. Therefore, ATU had to allocate the capitalized DLC cost between material costs and installation costs based on the relationship from the entire workorder. As a result, the estimate may not represent an accurate cost for the materials and installation costs therefore, and could be incorrectly applied to ATU's cost structure in other proceedings.*

14. GCI Response - ATU alleges that its estimate for digital line carrier devices "may" be inaccurate and that such inaccuracy may be misapplied in other proceedings. Mere inaccuracy does not render data confidential nor protect data from public disclosure. In any event, ATU would be in a position to remedy any inaccuracies should the need arise. That the information may be inaccurate and may distort the USF model underscores why it is essential to require disclosure.
15. Drop Lines for Residential Customers - ATU and the Alaska Public Utilities Commission are involved in a court case that includes a dispute regarding the cable fill investments of ATU. Since this information provides current fill factor conditions that may influence the court proceeding, it is considered confidential.
15. GCI Response - The fact that ATU and the Alaska PUC are disputing ATU's cable fill investments does not transform ATU's current fill factors into confidential information subject to non-disclosure. Nevertheless, GCI is willing to review such information subject to an appropriate confidentiality agreement.
17. Riser Cable - Riser cable and intrabuilding cable are combined in the same account. Therefore, ATU had to allocate the amount of investment that represents riser cable installed prior to de-regulation in 1986 by assuming that all cable installed prior to that date, still in the account, represents riser cable. All investment installed after that date is not considered riser cable, but intrabuilding. As a result, the estimate may not represent an accurate cost for riser cable in regulated plant, therefore could be incorrectly applied to ATU's cost structure in other proceedings.
17. GCI Response - ATU alleges that its estimate for riser cable "may" be inaccurate and that such inaccuracy may be misapplied in other proceedings. Mere inaccuracy does not render data confidential nor protect data from public disclosure. In any event, ATU would be in a position to remedy any inaccuracies should the need arise. That the information may be inaccurate and may distort the USF model underscores why it is essential to require disclosure.
18. Residential, single-line business and multi-line business customers - This information is completely sensitive. ATU must compete in the market place along-side other alternative service providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI Communications, Inc. ("GCI") and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than

ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska. Providing this information publicly would give ATU's competitors a competitive advantage by providing insight and direction for pricing and marketing purposes. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's services, without having to disclose their own information to provide their equivalent service offering.

18. GCI Response - Commercial or financial information that is filed with a federal agency pursuant to a mandatory requirement (such as the Commission's data request) is not considered confidential under 5 U.S.C. § 552(b)(4) unless disclosure is likely to cause substantial competitive harm to the submitting party or impair the government's ability to obtain necessary information in the future. National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). ATU therefore must demonstrate that disclosure of residential, single-line business and multi-line business customer revenue data, by study area, is likely to cause it to suffer substantial competitive harm. ATU's conclusory and generalized allegations of competitive harm cannot support non-disclosure. National Parks and Conservation Ass'n v. Kleepe, 547 F.2d 673, 680-81 (D.C. Cir. 1976). GCI will be a contributor to and possibly a recipient of universal service funds. Its ability to meaningful comment on the Commission's models for estimating forward-looking economic costs that non-rural LECs would incur to provide universal service in Alaska would be severely impeded if ATU's request for non-disclosure were granted.
21. Contracts with digital line carrier manufacturers - *The contract with Fujitsu Network Communications, Inc. ("Fujitsu") is considered confidential as this vendor provides competitive products and services. Since contracts are negotiated and terms and conditions vary among vendor customers, Fujitsu has requested its costing information be kept confidential so as not to interfere with the negotiation process it has with other customers.*
21. GCI Response - ATU asserts that its contract with Fujitsu is "considered" confidential and that Fujitsu has requested that it treat the contract as confidential. The relevant inquiry is whether disclosure of the agreement would competitively harm ATU, not Fujitsu. ATU has not even alleged that it would suffer competitive harm. Nevertheless, GCI is willing to review the contract subject to an appropriate confidentiality agreement.

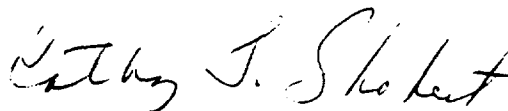
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For the reasons stated above, ATU's request for confidential treatment should be denied in its entirety and the subject data should be placed in the public file.

The undersigned will be responsible for a maximum search fee of \$300.00 for locating and reproducing the requested documents. The data for which ATU requested non-disclosure was submitted to Charles Keller of the FCC at 2100 M Street, N.W., Room 8918, Washington, D.C. 20554 on August 15, 1997.

If you have any questions concerning this request, please contact the undersigned at (202) 842-8847.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kathy L. Shobert".

Kathy L. Shobert

Enclosure

Corrected Version

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)

ORDER

Adopted: July 9, 1997

Released: July 9, 1997

By the Deputy Chief, Common Carrier Bureau:

1. In conjunction with the Commission's proceeding to select a forward-looking mechanism for support to non-rural local exchange carriers (LECs) serving rural, insular, and high cost areas,¹ we request certain information from the Regional Holding Companies (RHCs),² GTE, Sprint Corporation (Sprint), Anchorage Telephone Utility, and Puerto Rico Telephone Company. The requested information will enable the Commission to evaluate models for estimating the forward-looking economic costs that non-rural LECs would incur to provide universal service in rural, insular, and high cost areas.

2. In our May 1997 Report and Order on Universal Service (Order), we adopted a plan for establishing universal service support mechanisms for rural, insular, and high cost areas that will replace current implicit federal subsidies with explicit support based on the forward-looking economic cost of providing supported services.³ We adopted a forward-looking economic cost methodology⁴ that will calculate universal service support in four steps. First, we will estimate the forward-looking economic costs of providing universal service in rural, insular, and high cost areas.⁵ Second, we decided to establish a nationwide revenue benchmark calculated on the basis of average revenue per line.⁶ Third, we will calculate the difference between the

¹ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 (rel. May 8, 1997) (Order), at para. 245.

² The RHCs include Ameritech, BellSouth, Bell Atlantic, NYNEX, SBC Communications Inc., and U S WEST.

³ Order at para. 199.

⁴ Order at para. 223.

⁵ Order at para. 223.

⁶ Order at para. 200.

forward-looking economic cost and the benchmark.⁷ Fourth, federal support will be 25 percent of that difference, corresponding to the percentage of interstate allocated loop.⁸ We further decided to use forward-looking economic cost studies conducted by state commissions that choose to submit such cost studies to determine universal service support.⁹ Where a state elects not to conduct such a study, we decided to determine the forward-looking economic cost of providing universal service in that state according to a forward-looking economic cost mechanism adopted by the Commission with assistance from the Federal-State Joint Board on Universal Service (Joint Board).¹⁰ We intend to replace the current universal service support mechanisms with a forward-looking economic cost mechanism to determine support for non-rural LECs beginning January 1, 1999.

3. As noted in the Order, we intend to seek further comment on the mechanism we should adopt to estimate the forward-looking economic costs that non-rural local exchange carriers (LECs) would incur to provide universal service in rural, insular, and high cost areas (hereinafter "the selected mechanism").¹¹ The complexity of the forward-looking economic cost models submitted for our consideration in 1997, combined with the conflicting design components and lack of supporting data for many of the input values, precluded the Commission from choosing a mechanism on May 8, 1997.¹² We therefore intend to seek further comment on the platform design and input variables that should be used in the selected mechanism. We believe that, in addition to comments that we receive in this proceeding, specific information from large LECs is necessary to allow thorough examination of the models before us, and adoption of a mechanism for determining support that will send the correct signals for entry, investment, and innovation.

4. *Purpose of Data Request.* This data request is being issued to assist the Commission in adopting a mechanism that estimates the forward-looking economic costs that non-rural LECs would incur to provide universal service in rural, high cost, and insular areas.

5. *LECs Subject to Data Request.* The RHCs, GTE, Sprint, Anchorage Telephone Utility, and Puerto Rico Telephone Company must respond to this data request.

6. *Instructions for Data Request.* Respondents shall comply with this data request by responding to the questions in the attached spreadsheet using Excel software, version 7.0 or earlier, and by providing other information in the format indicated in the data request.

⁷ Order at para. 200.

⁸ Order at para. 201.

⁹ Order at para. 212.

Respondents may obtain the attached spreadsheet on a computer diskette by contacting Sheryl Todd at 202-418-7400. Respondents should add columns or rows to the spreadsheet, as appropriate, for additional study areas, wire centers, or switches. Because responses will be electronically compiled into a consolidated database, however, respondents should not insert, delete, or move any rows, columns, or text other than those that are necessary for a complete response. "Not applicable" responses should be designated by entering "NA" in the appropriate data cell and must be explained on a separate sheet of paper.

7. *Universal Service Data Request.*

- (1) Loops. For the year ending December 31, 1996, indicate how many of each of the following type of loops there are for each *wire center* in each of your study areas:
- (a) Switched working loops
 - (i) Residential
 - (ii) Single-line business
 - (iii) Multi-line business
 - (b) Non-switched working loops
 - (c) Non-working loops
 - (d) Non-revenue loops (please explain why these loops do not generate revenue)

Please note that:

- *Working loops* include loops used for all services: message and special, revenue and non-revenue.
- *Non-working loops* include defective loops, loops reserved for some future activity, and loops with a pending connect status.
- *Switched loops* should only be counted as part of the wire centers in which they are switched.
- For *non-switched services*, count the actual number of subscriber loops used to provide the service, not the voice frequency equivalent. For example, DS1 service provided over two copper pairs would be counted as two subscriber loops.
- *Foreign exchange lines or trunks* should be counted as non-switched in the wire center where the customer and subscriber loop is located.
- For *switched loops served via a concentrator or carrier system*, count the actual number of customer lines served, not the transmission channels at the wire center.

- (2) Loop length studies. Provide the most recent loop length study conducted by or for your company for *each of your study areas*. List loop lengths, and for each loop length, specify how many loops are that length. Include all statistical studies used to support that loop length study and a glossary defining all terms not commonly used by other LECs. Describe how the study was performed. Indicate whether the study was performed using a stratified sample, and whether the stratification was based on density cells, study areas, or wire centers. Specifically indicate whether the study includes both working and non-working loops or only

working loops. List any other modifications or assumptions made in obtaining your loop sample. (See definition of working and non-working loops provided in Question 1.)

(3) Subscriber line usage studies. Provide the most recent subscriber line usage study or equivalent performed by or for your company *for each of your study areas*. Indicate the dates over which the study was performed, the number of lines sampled by service category and the wire centers included in the study. Include a glossary defining all terms not commonly used by other incumbent LECs.

(4) Basic residential service offerings. For each basic residential service plan that includes a per-minute or per-call charge, provide the number of calls or minutes that are not charged on a per-call or per-minute basis, if any, that are included as part of the service plan.

(5) Apportionment of cable costs. Indicate the percentage attributable to buried cable (Account 2423), underground cable (Account 2422), and aerial cable (Account 2421) for each of the following: (a) gross investment in distribution plant; (b) gross investment in feeder plant; (c) distribution loop length (in miles or kilometers); and (d) feeder loop length (in miles or kilometers). Please provide this information on a *wire center* basis. If it is not available on a wire center basis, provide the information on a *study area* basis.

(6) Installation cost data for cable facilities. Provide all data on the cost of installing cable facilities that have been submitted to a federal or state commission in 1995 or 1996. Include a glossary defining all terms not commonly used by other incumbent LECs.

(7) Subscriber utilization studies. Provide the most recent subscriber cable utilization study performed by or for your company *for each of your study areas* and provide the information by *wire center*. Separately identify utilization by feeder and by distribution. Please define utilization as the ratio of working loops (as defined in Question 1 above) to total loops. Include a glossary defining all terms not commonly used by other LECs.

(8) Structure-sharing percentages. What percent of the structures that support your outside plant are shared with other companies? Provide the sharing percentage, by *study area*, for each of the following categories: (a) poles; (b) conduits; and (c) trenches. The sharing percentage is the proportion of investment that is assigned to the telephone company. Provide the information separately for interoffice (trunk) cable and subscriber cable.

(9) Multi-line residential customers. How many of your residential customers are multi-line customers, where multi-line means multiple communications channels and not multiple telephone numbers? Provide this line count on a *study area* and a *wire center* basis. Indicate the number of these channels that are served through a basic-rate ISDN service.

(10) Poles. Provide the current cost of a 40-foot class 4 treated southern pine pole and the average cost of installing such a pole in 1996.

(11) Detailed continuing property records.

(a) For the year ending December 31, 1995, provide the detailed continuing property record (DCPR) balance for USOA Account 2212 (digital electronic switching) for each *wire center* and the number of switched lines (not line numbers) working from the digital switches in that wire center.

(b) For the above account, summarize the material cost and the installed cost by *wire center* and by all characters of the *equipment category code* (EQCAT or ECN) used in your DCPR records. Provide translation tables for the EQCAT or ECN codes and for the location codes used in the account 2212 DCPR records. Provide the DCPR summaries in ASCII files on 3 1/2" floppy disks, DC2120 magnetic tape cartridges, Iomega ZIP disks, or Iomega JAZ disks for use on a PC platform.

(12) Digital switches. For all digital switches purchased in 1995 and 1996, provide the material and installed cost of *each switch* and the number of lines served by each switch at the end of its first twelve months in service. If a switch has not been in service for twelve months, state the length of service and the number of lines it serves at present.

(13) Contracts with switching manufacturers. For every switching manufacturer with which you currently have a contract:

(a) Provide a copy of that contract. Indicate if you consider the contract proprietary, and follow the instructions in para. 8 for filing confidential information.

(b) If not clearly defined in the contract, please provide definitions of the following terms as they were used in the contract: (i) new switch; (ii) growth to a new switch; (iii) growth to an embedded switch; (iv) remote switch; and (v) remote switching module.

(c) Does the contract price include the removal of the existing switch(es)?

(d) What time period does the contract cover?

(e) How many lines are you committed to install under the contract, if any?

(14) Digital line carrier devices. For all digital line carrier devices purchased in 1995 and 1996, provide the following:

(a) The material and installation cost of each device. (Provide the cost of common equipment separately from the cost of per-line equipment.)

(b) The number of lines served by each device at the end of its first twelve months in service.

(15) Drop lines. With regard to drop lines that you install for residential customers:

(a) Describe the number of copper pairs that you normally install per dwelling unit in both single family and multi-family dwellings.

(b) If multi-family dwelling units are served by fiber, provide the number of

DSO transmission channels per dwelling unit.

(c) If you install a different number of pairs depending on whether the drop is aerial or buried, indicate the difference in number.

(16) Maintenance expenses. With regard to maintenance expenses for switches, circuit equipment, and cable and wire facilities:

(a) Provide the most recent estimate of these expenses as incorporated into a forward-looking or economic cost study *for each of your study areas* that was filed with a state commission or the Federal Communications Commission. Indicate the date and docket number of each submission, and the commission(s) to which it was submitted.

(b) Explain the method used to determine these expenses and provide a copy of the calculations that support the expense estimate.

(c) Provide evidence, if possible, of any differences in maintenance expenses between fiber and copper cable.

(d) Provide evidence, if possible, of any differences in maintenance expenses among aerial, underground, and buried cable.

(17) Riser cable.

(a) Do you currently install riser cable in multi-unit residential housing or commercial buildings?

(b) If so, under what conditions do you consider this installed cable to be part of the regulated total plant in service?

(c) What percentage of the installed riser cable do you include in regulated total plant in service?

(18) Residential, single-line business, and multi-line business customers. For residential, single-line business, and multi-line business customers for June 1996, provide the following for each *study area*:

(a) The total local service revenue and the number of customers. *Total local service revenue* includes flat monthly charges, local usage charges, taxes, extended area service charges (mandatory and optional), local mileage and zone charges, local information charges, federal and state subscriber line charges, other mandatory surcharges, and optional services, such as touch tone, call waiting, and call forwarding.

(b) The sum of taxes and 911 surcharges.

(c) The total of your billings for toll service for which you provided the toll service.

(d) The total of your billings for which you billed for toll services provided by another carrier.

(e) For multi-line residential customers, where multi-line means multiple communications channels and not multiple telephone numbers, provide the revenue generated by the purchase of the additional lines.

(19) Miles served by wire center. Provide the number of square miles served by each *wire center*.

- (20) Cost of land and buildings. For each wire center, provide the historical cost of the land and buildings. Indicate the number of switches in each wire center.
- (21) Contracts with digital line carrier manufacturers. For every digital line carrier manufacturer with which you currently have a contract:
- (a) Provide a copy of that contract. Indicate if you consider the contract proprietary, and follow the instructions in para. 8 for filing confidential information.
- (b) What time period does the contract cover?

8. *Confidential Information.* If a respondent considers that its response to any portion of this data request constitutes confidential commercial or financial information, the respondent should comply with 47 C.F.R. section 0.459, the Commission's rules for requesting that submitted information be withheld from public inspection, and should observe the following procedure: The respondent should complete the entire data request with the exception of those specific responses that are considered confidential information. This expurgated version should be filed and distributed in accordance with 47 C.F.R. section 0.459 and the instructions found in "Responses to Data Request," below. The respondent should then duplicate the filed computer disks and paper copies, add the confidential data, and return one full confidential copy to Charles Keller at 2100 M Street, NW, Room 8918, Washington, DC 20554. Each confidential disk and paper copy must be clearly marked "Confidential." In addition, the confidential disks and paper copies must be accompanied by a completed copy of the "Designation of Confidential Information" form attached to these instructions. The "Designation of Confidential Information" form must be signed by an authorized corporate officer or agent, and must list by question number all of the data responses considered confidential commercial or financial information. For each such response, indicate the reason for withholding the information from public inspection, and the facts on which those reasons are based. Copies of the "Designation of Confidential Information" form must also be filed and distributed with the expurgated data response, in accordance with the instructions found in "Responses to Data Request," below.

9. *Public Reporting Burden.* The public reporting burden for this collection of information is estimated to average 488 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Room 234, Paperwork Reduction Project (3060-0781), Washington, DC 20554.

10. *OMB Approval.* Approved by OMB, 3060-0781, Expires 1/31/98, Burden hour per respondent: 488 average. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless the agency displays a currently valid control number.

11. *Questions.* Any questions regarding the data request or problems in completing it should be communicated to Charles Keller, 202-418-7400, ckeller@fcc.gov.

12. *Responses to Data Request.* Responses must be submitted on or before August 15, 1997. For a response to be complete, it must include a paper copy of all information requested herein, including a paper copy of the completed Excel spreadsheet and of the information requested in Data Request Question 11, except as provided in paragraph 8. A complete response must also include an electronic copy of the completed Excel spreadsheet on a 3.5" computer diskette and an electronic copy of the information requested in Data Request Question 11 in one of the prescribed electronic formats (hereinafter referred to as "information in the prescribed formats").

13. A signed original of a complete paper copy of each respondent's response, and one copy of information in the prescribed electronic formats, must be transmitted to the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037. Two complete paper copies, and two copies of information in the prescribed electronic formats, must be transmitted to Sheryl Todd, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2100 M Street, NW, Room 8611, Washington, DC 20554.

14. Accordingly, pursuant to Sections 5(c), 201-205, 213, 215, 218, 220(c), 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 155(c), 201-205, 213, 215, 218, 220(c), 254, and 403, and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, it is **HEREBY ORDERED** that the Regional Holding Companies, GTE, Sprint Corporation, Anchorage Telephone Utility, and Puerto Rico Telephone Company shall complete the attached Universal Service Fund Data Request in the prescribed formats, and file their responses to the data request with the Commission by August 15, 1997.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief, Common Carrier Bureau